

4 Official Opinions of the Compliance Board 1 (2004)

MINUTES – PROCEDURE – DELAY IN APPROVAL OF OPEN SESSION MINUTES VIOLATED ACT – DELAY IN APPROVAL OF CLOSED SESSION MINUTES DID NOT VIOLATE ACT

January 6, 2004

Mr. Conrad P. Potemra

The Open Meetings Compliance Board has considered your complaint that the Commissioners of Poolesville violated the Open Meetings Act by failing to adopt minutes of six meetings, held between July 21 and September 2, 2003, in a timely manner.

For the reasons explained below, we conclude that the Commissioners violated the Act by unreasonably delaying adoption of minutes of the open sessions held on July 21 and August 4. As to the preparation of minutes for the other meetings raised in the complaint, no violation occurred.

I

Complaint and Response

The complaint alleged six violations of the Open Meetings Act by the Commissioners of Poolesville, which we restate as follows: The Commissioners held both open and closed meetings on July 21, August 4, and September 2, 2003, for which minutes were required.¹ The Commissioners violated the Act, it is asserted, by failing to approve minutes for these meetings until November 3, 2003. The complaint cited Compliance Board Opinion 01-3 (February 1, 2003) as a basis for concluding that the alleged violations occurred.

¹ The complaint referred to regularly scheduled open meetings as well as “executive sessions” of the Commissioners held on each of the three dates, resulting in six distinct alleged violations. We interpret references in the complaint and response to executive sessions to mean meetings closed to the public in accordance with procedures of the Open Meetings Act. Despite the terminology used in the complaint and response, in this opinion we shall refer simply to “open” and “closed” sessions.

In a timely response on behalf of the Town Commissioners, Alan M. Wright, Esquire, explained the Commissioners' general practice and the delay cited in the complaint. According to Mr. Wright, it is the Commissioners' practice to approve minutes of the Commissioners' meetings within a month, whenever practicable. The Commissioners' practice, however, is to wait until after closed session minutes are approved before approving minutes of the same day's open session, "so that the information in both sets of minutes is accurate and consistent." Closed session minutes are normally prepared by the Town Attorney.² Due to illness and the press of other business, minutes of the July 21 and August 4 closed sessions were not ready for approval at the September 2 meeting, resulting in a delay in finalizing both the closed session minutes and corresponding minutes for open sessions conducted on the same dates. Subsequent meetings that had been scheduled for October 6 and 15 were cancelled for various reasons. Minutes for each of the meetings in question were approved on November 3. In closing, the response indicated that the Commissioners hope to adhere more closely to their policy of approving minutes within a 30-day period.

II

Analysis

A. General Requirements

For brevity's sake, we shall refrain from a lengthy recapitulation of the requirements of the Open Meetings Act regarding minutes. These requirements have been discussed at length in several of our opinions.³ The key points are these:

² Based on the Town's response to a complaint considered last August, we understand that minutes for open sessions of the Town Commissioners are produced through the services of a transcriber based on recordings of the meetings. See Compliance Board Opinion 03-18 (August 20, 2003), slip op. at 4.

³ Compliance Board Opinion 03-10 (June 20, 2003); Compliance Board Opinion 01-19 (October 24, 2001); Compliance Board Opinion 01-5 (February 22, 2001); Compliance Board Opinion 99-19 (November 18, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 92; Compliance Board Opinion 99-18 (November 4, 1998), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 87, 89; and Compliance Board Opinion 98-3 (May 12, 1998), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 11.

- The Act requires a public body to keep minutes of each meeting that is subject to the Act, regardless of whether the meeting is open to the public or closed. §10-509(b).⁴
- While a public body may rely on staff to prepare minutes for the body's consideration, ultimate responsibility for the keeping of minutes rests with the public body itself. §10-508(b).
- Minutes of closed meetings generally are unavailable for public inspection. §10-509(c)(3). Minutes of open sessions are to be available upon request, within a reasonable period, to any member of the public. §10-509(d).
- A public body has a reasonable amount of time to review draft minutes and correct any deficiencies in them. §5-509(b).
- As a general rule, the cycle for preparation and approval of minutes should parallel the cycle of the public body's meetings, allowing lag time for drafting and review.
- Brief delays in preparing minutes due to staff illness or temporary staff shortages are understandable and consistent with the Act's practicability standard.
- Although grouping the minutes of several different meetings for approval all at once is not the preferred practice, it is not necessarily a violation of the Act.
- When a public body unjustifiably delays adoption of minutes for an unreasonable period, it violates the Act.

B. Application of Requirements

In this case, there was approximately a 15-week delay between the first meeting noted in the complaint and approval of the minutes. According to the Town's response, the delay resulted, in part, from the illness of the attorney who normally prepares minutes of closed sessions. This resulted in a domino effect, delaying approval of minutes of open sessions held on the same dates. Further delay resulted when subsequent meetings, at which the minutes apparently would have been approved, were cancelled.

⁴ All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

Normally, simultaneous consideration of minutes of an open session and a closed session conducted on the same date would not be problematic. In this case, however, the practice resulted in minutes for the public meetings held on July 21 and August 4 remaining unavailable to members of the public for an unreasonably lengthy period. Thus, we find that the Commissioners' failure to adopt minutes for these meetings until November 3 violated the Act. In reaching this decision, we acknowledge the Commissioners' concern in assuring consistency between minutes of a closed session and the summary of the closed session that appears in the minutes of the subsequent open session. *See* §10-509(c)(2). Nevertheless, this goal could have been achieved by consulting any tapes or notes of the closed session, coupled with review by the Commissioners, notwithstanding the absence of the Town Attorney's draft minutes. The Commissioners were obliged to find a way to meet the Act's requirement that open session minutes be available with reasonable promptness.

As noted above, minutes for the Commissioners' closed meetings are routinely prepared by the Town Attorney, and the delay in producing minutes for closed sessions held on July 21 and August 4 was due, at least in part, to illness. While the better practice would have been for another individual to step in and assume responsibility for the minutes, considering these circumstances, we find no violation with respect to minutes of the closed sessions conducted on these dates. Members of the public, after all, were not prejudiced by this delay in the preparation of minutes that they had no legal right to see.⁵

Because meetings initially scheduled for October had to be cancelled, apparently the next meeting after the Commissioners' September 2 meeting was November 3, at which time minutes for the September sessions were approved. Thus, we find no violation in connection with the approval of minutes of the open and closed sessions conducted September 2.

In support of the complaint, we were referred to Compliance Board Opinion 01-3 (February 1, 2001). To be sure, in that opinion we noted that "[m]inutes must be prepared within a reasonable time, and routine delays of several months would be unlawful" Slip op. at 6. However, we also noted that "minutes need not always be prepared by ... the next meeting" and that "practical circumstances [must] be considered." *Id.* Considering the nature of

⁵ Under circumstances not present here, the public does have a right to see closed session minutes that, by operation of law or decision of a public body, become open to inspection. §10-509(c)(4).

the circumstances in the present case, we do not consider the result we reach here inconsistent with the opinion relied on in the complaint.

III

Conclusion

We find that the delay in approving minutes of closed sessions conducted by the Poolesville Commissioners on July 21 and August 4, 2003 was not unreasonable and, therefore, did not violate the “practicability” standard set forth in §10-509(b). Nor did a violation occur in connection with minutes of the sessions held on September 2. However, we find that the delay in approving minutes of open sessions conducted on July 21 and August 4 was unreasonable and violated the Act.

OPEN MEETINGS COMPLIANCE BOARD

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